

Councilors-at-Large

Mark A. Oram
 Michael H. Ossing
 Samantha Perlman
 Kathleen D. Robey

**Ward Councilors**

Ward 1 – Laura J. Wagner
 Ward 2 – David Doucette
 Ward 3 – J. Christian Dumais
 Ward 4 – Teona C. Brown
 Ward 5 – John J. Irish
 Ward 6 – Sean A. Navin
 Ward 7 – Donald R. Landers, Sr.

Council President

Michael H. Ossing

Council Vice-President

Kathleen D. Robey

**CITY OF MARLBOROUGH
 CITY COUNCIL
 MEETING MINUTES
 MONDAY, JUNE 6, 2022**

The regular meeting of the City Council was held on Monday, June 6, 2022, at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Ossing, Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Perlman & Robey. Meeting adjourned at 8:36 PM.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of the City Council meeting, May 23, 2022, **FILE**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: Whereas Steven W. Kerrigan having received eleven (11) votes for the position of City Clerk, and six (6) votes being necessary for election, Steven W. Kerrigan be and is herewith **REELECTED** as City Clerk of the City of Marlborough effective immediately for a three (3) year term to expire on May 20, 2025; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Transfer Request in the amount of \$6,300.00 which moves funds Veterans Benefits to Executive Secretary to cover the vacation and sick leave payout for an employee, **APPROVED**; adopted.

	CITY OF MARLBOROUGH										
	BUDGET TRANSFERS –										
	DEPT:	Mayor					FISCAL YEAR:	2022			
		FROM ACCOUNT:					TO ACCOUNT:				
Available										Available	
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance	
\$125,971.89	\$6,300.00	15430006	57710	Veterans Benefits	\$6,300.00	11210002	50590	Executive Secretary		\$4,479.97	
	Reason:	Numbers are down				Vacation and Sick Leave payout					
	\$6,300.00	Total			\$6,300.00	Total					

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Proposed Zoning Map Amendment for parcels of land located on Jefferson Street and a small portion of Lincoln Street, in proper legal form, Order No. 21/22-1008475E, **MOVED TO ITEM 21**; adopted.

Councilor Dumais Recused.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Assistant City Solicitor Jeremy McManus, re: Petition of New Cingular Wireless, PCS, LLC, (d/b/a AT&T) for grant of location for one (1) small cell wireless facility to be located on an existing pole within the public right of way in the vicinity of 241 Forest Street, in proper legal form, Order No. 22-1008558C, **MOVED TO ITEM 18**; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Assistant City Solicitor Jeremy McManus, re: Special Permit from Cellco Partnership d/b/a Verizon Wireless to install a new stealth Wireless Communication Facility including an 80-foot stealth pole with accessory ground equipment at 739-769 Donald J. Lynch Boulevard, in proper legal form, Order No. 22-1008570B, **MOVED TO ITEM 19**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Police Chief David Giorgi, re: Detail Police Officers pursuant to Special Permit condition number 14 for Vedi Naturals, LLC d/b/a Kosa, 505 Boston Post Road West, **FILE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation on the Proposed Zoning Amendment to Chapter 650 §39 "Neighborhood Business District", **FILE**; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That there being no objection thereto set **MONDAY JUNE 27, 2022**, as the **DATE FOR PUBLIC HEARING**, on the Petition from Massachusetts Electric and Verizon New England, to relocate Pole 13-5, eight (8) feet to the right on Cedar Hill Street, referred to the **PUBLIC SERVICES COMMITTEE**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 101, §12A, the City Council hereby **GRANTS** FEMARA, Inc., for a three-day period, from August 26 through 28, 2022, inclusive, and consistent with the charitable purpose of FEMARA, Inc., a license to conduct under their control a temporary or transient business at their convention being held at the Best Western Royal Plaza Hotel & Trade Center in which transient vendors participating in such sale shall not be subject to the provisions of §§3 to 12 inclusive; adopted.

Motion by Councilor Oram, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Central MA Mosquito Control Project, re: Personnel will be in the community responding to residents' concerns about mosquitos on various dates in June 2022, **FILE**; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of following Boards, Commissions and Committees, **FILE**; adopted.

- a) Planning Board, April 25, 2022.
- b) Traffic Commission, March 30, 2022.

Reports of Committees:

Councilor Irish reported the following out of the Finance Committee:

**City Council Finance Committee
June 1, 2022
Minutes and Report**

This meeting convened at 7:00 PM and was held in the City Council Chamber and open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34) and was available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

Voting Members: Chair Irish, Councilors Dumais, Perlman, and Brown; Oram absent.

Non-Voting Members: Councilors Ossing, Navin, Wagner, Doucette, Landers, and Robey.

Others Present: Mayor Vigeant and city managers were present to address the following Orders.

Order No. 22-1008604A-D: Communication from the Mayor re: Revolving Fund Spending Limits for the Public Safety Revolving Fund, the Park and Recreation Revolving Fund, the COA Revolving Fund and the Water & Sewer Revolving Fund for FY 2023.

On a motion by Councilor Dumais, seconded by Chair, the committee recommends the reauthorization of the revolving fund as requested.

Vote 4-0 (Oram absent).

Order No. 22-1008605: Communication from the Mayor re: Transfer Request in the amount of \$1,735,807.00 which moves funds from and to various accounts as outlined to cover expenses for several departments for the remainder of Fiscal Year 2022.

On a motion by Councilor Perlman, seconded by Chair, the committee recommends approval of the year-end transfers under a suspension of the rules. Vote 4-0 (Oram absent).

Order No. 22-1008611: Communication from the Mayor re: Grant Acceptance in the amount of \$219,982.00 from Community Compact Cabinet's Municipal Fiber Program awarded to Information Technology to be used to replace BANA copper network lines used for radio communications.

On a motion by Councilor Perlman, seconded by Chair, the committee recommends approval of the grant with condition that the required matching funds be sourced from other than PEG funds.

Vote 4-0 (Oram absent).

Reports of Committee Continued:

Order No. 22-1008606: Communication from the Mayor re: Transfer Request in the amount of \$1,000,000. from Undesignated Fund to Library Building Renovations to cover unanticipated cost overruns. Commission Divoll advised that the \$1M transfer is more than the cost of estimated repairs, that the repairs to the historical Terra Cotta main entrance will preserve the intent of the project, that there is no danger of personal injury from falling debris, and that no other surprises have been found.

On a motion by Councilor Perlman, seconded by Chair, the committee recommends approval of the transfer under a suspension of the rules. Vote 4-0 (Oram absent).

Motion made and seconded to adjourn; the meeting adjourned at 7:31 PM.

Councilor Robey reported the following out of the Urban Committee:

**City Council Urban Affairs Committee
June 1, 2022
Minutes and Report**

Urban Affairs & Housing Committee voting members present were Chairman Katie Robey, Councilor Doucette, Councilor Landers, Councilor Navin, and Councilor Wagner.

Other Councilors present were Brown, Irish, Ossing and Perlman.

Attorney Falk addressed the zoning petition on behalf of Alta Marlborough, LLC (Wood Partners) 91 Hartwell Avenue, Lexington, MA 02421.

Order No. 22-1008571: Proposed Zoning Amendment to Chapter 650 §39, Neighborhood Business District to authorize City Council by special permit to vary dimensional, parking, design and landscaping requirements applicable to a mixed-use development in the Neighborhood Business District upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of section 650-39, et seq. This authority continues subsequent to occupancy.

The chair stated the Council held its Public Hearing on May 9th with no comments, questions, or opposition from the public. The Planning Board held its Public Hearing on May 23rd and has sent a favorable recommendation that the chair read into the record. It was stated that similar language can be found in other parts of the code; and, if approved, the language would be in effect only for mixed use development in the Neighborhood District through a special permit granted by the council.

Councilor Doucette moved to approve the proposed zoning amendment to Chapter 650 §39 as submitted; the motion was seconded and carried 5-0.

The chair stated that the solicitor has offered to send a late communication with the order in proper form for the June 6 council meeting; the chair will report this zoning petition out of committee and ask for a suspension to accept the communication and to vote on this matter. This will allow for discussion of the special permit at the June 8th Urban Affairs meeting with this amendment and the zoning map changes both finalized.

Councilor Doucette moved to adjourn; it was seconded and carried 5-0. The meeting was adjourned at 6:38 pm.

Suspension of the Rules requested – granted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Transfer Request in the amount of \$1,735,807.00 which moves funds from and to various accounts as outlined to cover expenses for several departments for the remainder of Fiscal Year 2022, **APPROVED**; adopted.

FROM ACCOUNT:					TO ACCOUNT:				
Available									Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
\$11,233,713.00	\$1,523,205.00	10000	35900	Undesignated Fund	\$320,205.00	14001203	51390	Overtime-Snow & Ice	-\$320,203.39
	Reason:	To fund the snow & ice deficit for FY22							
					\$509,500.00	14001206	52960	Snow Removal	-\$508,853.57
	Reason:								
					\$693,500.00	14001206	57040	Operating Expenses	-\$692,737.21
	\$1,523,205.00	Total			\$1,523,205.00	Total			

FROM ACCOUNT:					TO ACCOUNT:				
Available									Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
\$44,303	\$7,500.00	60081006	55950	East Waste Water Treat Plant	\$15,000.00	60086006	52935	Solid Waste Disposal	\$7,335.00
	Reason:	Excess due to less chemicals purchased				Due to increased sludge volume in March & April			
\$29,542	\$7,500.00	60085006	55980	West Waste Water Treat Plant					
	Reason:	Excess due to less chemicals purchased							
\$40,016	\$24,000.00	14001504	53140	Contract Services	\$50,000.00	11920006	52200	Natural Gas	\$20,905.00
	Reason:	Excess due to use of Parks Maintenance Revolving				Cover natural gas expense thru end of Fiscal Year			
\$72,052	\$26,000.00	14001506	54640	Park Maintenance					
	Reason:	Excess due to use of Parks Maintenance Revolving							
	\$65,000.00	Total			\$65,000.00	Total			

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:		Various				FISCAL YEAR:		2022	
		FROM ACCOUNT:				TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$135,298.63	\$101,352.00	15430006	57710	Veteran's Benefits	\$1,770.00	11330001	50015	Finance Director/Treas	\$15,647.95
	Reason:	Number of veterans down from last year			Reason:	To fund through year end			
\$28,215.38	\$17,000.00	11510001	50172	Asst City Solicitor	\$550.00	11330002	50520	Principal Clerk	\$7,660.02
	Reason:	Prior vacancy			Reason:	To fund through year end			
\$28,215.38	\$1,000.00	11510001	50175	Paralegal	\$580.00	11520001	50530	HR Director	\$14,858.96
	Reason:	Prior vacancy			Reason:	To fund through year end			
					\$692.00	11920001	50690	Foreman	\$10,369.15
					Reason:	To fund through year end			
					\$240.00	12100001	50140	Police Chief	\$29,443.74
					Reason:	To fund through year end			
					\$370.00	14920001	50110	Recreation Director	\$13,160.68
					Reason:	To fund through year end			
					\$145.00	15120001	50220	Sealer of Weights	\$2,149.93
					Reason:	To fund through year end			
					\$480.00	15430001	50080	Veterans Director	\$10,071.60
					Reason:	To fund through year end			
					\$17,000.00	61090001	50740	Equipment Operators	\$97,112.53
					Reason:	To fund through year end			
					\$738.00	61090002	50520	Principal Clerk	\$7,466.95
					Reason:	To fund through year end			
					\$710.00	14001002	50520	Principal Clerk	\$15,382.43
					Reason:	To fund through year end			
					\$533.00	14001002	50550	Head Clerk	\$8,698.97
					Reason:	To fund through year end			
					\$1,465.00	14001303	50740	Equipment Operators	\$133,200.59
					Reason:	To fund through year end			
					\$217.00	60080001	50580	Asst Chemist	\$8,898.24
					Reason:	To fund through year end			
					\$2,755.00	11920001	50680	General Foreman	\$11,967.97
					Reason:	To fund through year end			
					\$124.00	11920001	50292	Bldg Maint Craftsman	\$26,197.46
					Reason:	To fund through year end			
					\$283.00	13032001	50690	Foreman	\$11,756.05
					Reason:	To fund through year end			
					\$14,000.00	11550006	53420	Telephone-City	\$0.00
					Reason:	To fund through year end			
					\$14,000.00	11550006	53421	Telephone-School	\$1,467.92
					Reason:	To fund through year end			
					\$5,700.00	11440004	53999	Other Services	\$448.11
					Reason:	To fund through year end			
					\$57,000.00	11510004	53110	Legal Services	\$10,309.11
					Reason:	To fund through year end			
	\$119,352.00				\$119,352.00				

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Mayor					FISCAL YEAR:	2022		
		FROM ACCOUNT:					TO ACCOUNT:			
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$11,233,713.00	\$28,250.00	10000	35900	Undesignated Fund	\$28,250.00	83600	32918	Stabilization-Open Space		\$519,077.10
	Reason:	To transfer annual wireless antennae payments received by the City in fiscal year 2021 to Open Space Stabilization								
	\$28,250.00	Total			\$28,250.00	Total				

Suspension of the Rules requested – granted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Transfer Request in the amount of \$1,000,000.00 from the Undesignated Fund to Library Building Renovations to cover unanticipated cost overruns, **APPROVED;** adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	DPW/Facilities					FISCAL YEAR:	2022		
		FROM ACCOUNT:					TO ACCOUNT:			
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$11,233,713.00	\$1,000,000.00	10000	35900	Undesignated Fund	\$1,000,000.00	30052301	58255	Library Bldg Renovations		\$2,106,061.33
	Reason:	To fund overruns on the Library project								
	\$1,000,000.00	Total			\$1,000,000.00	Total				

Suspension of the Rules requested – granted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED That the Communication from City Solicitor Jason Grossfield, re: Proposed Zoning Amendment to Chapter 650 §39 “Neighborhood Business District”, in proper legal form, Order No. 22-1008571A, **FILE;** adopted.

Councilor Dumais Recused.

Suspension of the Rules requested – granted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: THAT, PURSUANT TO SECTION 5 OF CHAPTER 40A OF THE GENERAL LAWS, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT CHAPTER 650 OF THE CODE OF THE CITY OF MARLBOROUGH, AS MOST RECENTLY AMENDED, BE FURTHER AMENDED AS FOLLOWS:

I. Chapter 650, Zoning, Section 650-39 entitled “Neighborhood Business District (NB),” is hereby amended by inserting a new subsection F as follows:

F. The City Council may, by special permit, elect to vary the dimensional, parking, design, and landscaping requirements applicable to a mixed-use development in the Neighborhood Business District upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this section (650-39, et seq.). This authority continues subsequent to occupancy.

II. The effective date of these amendments shall be the date of passage.

Councilor Dumais Recused.

APPROVED; adopted.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

Suspension of the Rules requested – granted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED That the Communication from the Mayor, re: Proposed Easement for National Grid relative to the installation of equipment for the redundant pumping station, **FILE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

Suspension of the Rules requested to allow the City Engineer to speak– granted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

Suspension of the Rules requested – granted.

ORDERED That pursuant to MGL Chapter 40, § 3, the City of Marlborough grant permanent utility easements, to be executed by the Mayor on behalf of the City, to the Massachusetts Electric Company (a/k/a “NGRID”), as described in the documents concerning, respectively, a Grant of Easement to Massachusetts Electric Company for installation of electrical service to the backup water supply pump station that is located next to the existing Cedar Hill station off D’Angelo Drive, **APPROVED**; adopted.

Suspension of the Rules requested – granted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That the Certification from Ward 7 Councilor Donald R. Landers, Sr., as required under MGL Chapter 39 §23D (“Mullin Rule”), regarding the Application for Special Permit of Alta Marlborough, LLC (Wood Partners), to build a mixed-use project in the Neighborhood Business District consisting of 10,074 square feet of ground floor retail and commercial space, 276 dwelling units in addition to an on-site parking garage with 448 spaces to be located at the corner of Lincoln and Mechanic Streets, Order No 22-1008572, **FILE**; adopted.

Suspension of the Rules requested – granted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Mayor, re: Proposed Amendment to the Code of the City of Marlborough relative to nonunion employee titles, **FILE**; adopted.

Suspension of the Rules requested – granted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: At a regular meeting of the Marlborough City Council held on Monday, June 6, 2022, the following proposed amendments to the Code of the City of Marlborough, having been read was **ORDERED ADVERTISED** and **PLACED ON THE JUNE 27, 2022, CITY COUNCIL AGENDA** as follows:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED, AS FOLLOWS:

- I. By amending Section 125-3(F), by deleting the words “Mayor’s executive aide” in the first sentence and replacing them with the words: “Chief of Staff to the Mayor”;
- II. By amending Section 125-3(F), by deleting the word “aide” in the second sentence and replacing it with the words: “Chief of Staff to the Mayor”;
- III. By amending the City Code in its entirety, including Section 125-6, by deleting the words “Executive Aide to the Mayor” in each instance that they appear and replacing them with the words: “Chief of Staff to the Mayor”; and
- IV. By amending the City Code in its entirety, including Section 125-6, by deleting the words “Executive Secretary to the Mayor” in each instance that they appear and replacing them with the words: “Executive Administrator to the Mayor”.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED That the Proposed Tax Increment Financing (TIF) Agreement with Solmetex, LLC and LPCH 1000 Nickerson L.P., who will be occupying 65,000 square feet in a building located at 1000 Nickerson Drive, Map 88, Parcel 29 and Parcel 36 (including portions thereof), **FILE**; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 125, ENTITLED “PERSONNEL,” §6 “SALARY SCHEDULE” AS FOLLOWS:

I. By adding to the salary schedule referenced in Section 125-6, the following:

<u>Position</u>	<u>Rate</u>
Sealer of Weights and Measures	Not to Exceed \$25 Per Hour.

II. This ordinance shall supersede and replace any existing rate for said position(s) in the current salary schedule.

APPROVED; adopted.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED That the Reappointment of Joseph Bisol to the Council on Aging Board for a 4-year term to expire on May 4, 2026, **APPROVED;** adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED That the Appointment of Zella Haesche to the Council on Aging Board for a 4-year term to expire on May 4, 2026, **APPROVED;** adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED That the Petition from Massachusetts Electric to relocate and install a new pole to remove a tree guy on Amory Road, **APPROVED WITH THE FOLLOWING CONDITIONS;** adopted.

1. The new Pole P4 shall be located at least 5 feet from the edge of the driveway to #61 Amory Road.
2. National Grid and their contractor shall walk the job area with a representative of DPW/Engineering prior to the start of work to review and approve of the final location of the new pole.
3. Pump Station Project Managers.
4. Any necessary easements are to be obtained from affected property owners.
5. A street opening permit must be applied for by the proposed contractor performing the work.
6. The contractor performing the work must obtain a street opening bond with the City of Marlborough.
7. The contractor shall provide the Engineering Division preconstruction photos of driveways, sidewalks, lawn areas, and roadway areas impacted by all construction activities.
8. A proper staging area is to be located/acquired before work commences – material and equipment is not to be parked/stockpiled within the city right of way and or private property unless permission is granted in writing by the property owner.

9. The contractor is to ensure residents are always able to enter and exit their driveways (have necessary steel plating on site and accessible).
10. Ensure construction safety controls are established (signage, drums, police details, etc...) and are in accordance with the latest MUTCD standards.
11. Trench backfilling, compacting, temporary, and final paving are to be done in accordance with the City of Marlborough standard trenching details.
12. Trenches are to be paved or completely backfilled and compacted at the end of each workday. Trenches are never to be left unattended.
13. Post construction loaming and seeding are to be done in accordance with the 1995 MHD Standard Specifications sections 751 & 765.
14. Proposed utility pole(s) shall not put any sidewalks or sidewalk ramps into non-compliance with current ADA standards.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED That the Communication from Assistant City Solicitor Jeremy McManus, re: Petition of New Cingular Wireless, PCS, LLC, (d/b/a AT&T) for grant of location for one (1) small cell wireless facility to be located on an existing pole within the public right of way in the vicinity of 241 Forest Street, in proper legal form, Order No. 22-1008558C, **FILE**; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED That the City Council for the City of Marlborough, pursuant to M.G.L. c.166, §22 and Chapter 473, Article III of the City of Marlborough General Code entitled "Small Cell Wireless Facilities Within Public Rights-of-Way," does hereby approve the petition of New Cingular Wireless PCS LLC ("AT&T") dated February 23, 2022, filed with the City Clerk on March 18, 2022, to grant a location on an existing utility pole located in the public right of way adjacent to 241 Forest Street in Marlborough, which pole is designated as National Grid pole #25-2, in order for AT&T to deploy a small cell facility thereon by constructing and maintaining telecommunications wires and appurtenances, including a pole top canister antenna, remote radio heads and associated wires, cables, fiber demarc box, electric meter and associated equipment (the "Small Cell Facility") all as depicted on plans submitted with AT&T's petition and in a photo simulation submitted to the City Council and Public Services Committee, which plans are attached hereto and incorporated herein; subject, however, to the following conditions, which conditions shall be binding upon AT&T, its successors and/or assigns:

1. The Small Cell Facility shall be of such material and construction, and all work shall be done in such manner, as to be satisfactory to the City Council and the Engineering Division of the City's Department of Public Works (the "City Engineering Division").
2. AT&T shall indemnify and hold harmless the City against all damages, injuries, costs, expenses, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and equity, allegedly caused by the acts or neglect of AT&T, its employees, agents and servants in any manner arising out of the rights and privileges granted herein to AT&T for its Small Cell Facility.

3. AT&T shall comply with the requirements of existing City ordinances, including but not limited to Chapter 473, Article III, entitled "Small Cell Wireless Facilities Within Public Rights-of-Way," as may be applicable, and such requirements as may hereafter be adopted governing the construction and maintenance of the Small Cell Facility. To the extent any requested relief from the siting standards in City Ord. Ch. 473, Article III is authorized by this approval, such relief is provided consistent with Ord. Sec. 473-27(B).
4. AT&T shall not install its Small Cell Facility on double poles. If National Grid pole #25-2 becomes a double pole in the future, AT&T shall remove its Small Cell Facility to a single pole as expeditiously as possible within the guidelines then prescribed by National Grid, but in any event no later than December 31st of the year in which National Grid pole #25-2 becomes a double pole; provided, however, that if AT&T is unable to comply with the December 31st deadline for reasons fairly attributable to National Grid, AT&T shall submit to the City Council a letter, to be received by the City Council prior to such deadline, requesting that the Council extend the deadline to a specified date in the subsequent year and providing good cause in support of such request.
5. All cutting of and/or digging into City streets and/or sidewalks by or on behalf of AT&T in conjunction with its Small Cell Facility is prohibited, as is all underground installation associated with the Small Cell Facility; provided, however, that the grounding rod proposed to be installed as part of the Small Cell Facility is permitted as long as 1) AT&T installs the rod immediately adjacent to National Grid pole #25-2 so as to cause minimal disturbance to the surface of the street or sidewalk, and 2) AT&T restores the street or sidewalk surface to its pre-disturbance condition to the satisfaction of the City Engineering Division.
6. The Small Cell Facility shall be color-coordinated so as to best minimize the visual impact of the Facility.
7. The Small Cell Facility's remote radio heads and associated wires, cables, fiber demarc box, electric meter and associated equipment shall be mounted on the side of National Grid pole #25-2 facing away from the roadway.
8. Any future modification of the Small Cell Facility by AT&T shall require further City Council Approval.
9. Any future road reconstruction or repair project by the City and/or the Commonwealth requiring the relocation of National Grid pole #25-2 shall result in AT&T moving their Small Cell Facility to another pole in a timely fashion after having been notified by the City Engineering Division about the road project; provided, however, that any such relocation shall require further City Council approval.
10. Prior to the commencement of construction and/or installation of the Small Cell Facility, AT&T shall provide the City Engineering Division with a written construction and/or installation schedule satisfactory to the Division.

11. Prior to the commencement of construction and/or installation of the Small Cell Facility, AT&T shall provide the City's Chief Procurement Officer (the "City CPO") with a bond from a surety authorized to do business in Massachusetts and satisfactory to the City CPO in an amount equal to the cost of removal of the Small Cell Facility from National Grid pole #25-2 and for the repair and/or restoration of the public way, in the vicinity of National Grid pole #25-2, to the condition the public way was in as of the date of this order, said amount to be determined by the City Engineering Division. The amount of the bond shall be the total of the estimate by the Division plus an annual increase of 3% for the operating life of the Small Cell Facility. AT&T shall notify the City CPO and the Division of any cancellation of, or change in the terms or conditions in, the bond.
12. Each year on July 1st, AT&T shall submit an affidavit that the Small Cell Facility remains in use and that the Small Cell Facility remains covered by liability insurance naming the City as an additional insured.
13. Each year on July 1st, AT&T shall pay to the City of Marlborough an annual recertification fee of \$250.00 for each year that the Small Cell Facility remains in use.
14. If the Small Cell Facility is no longer in use, it shall be removed by AT&T, at its expense, within 60 days. If the Small Cell Facility is not removed by AT&T within 60 days of it no longer being in use, AT&T shall pay a fine of \$100.00 per day until such installation is removed by AT&T.
15. Failure by AT&T to comply with any of the above conditions to the satisfaction of the City Council or, as applicable, the City Engineering Division or the City CPO shall result in the City Council's review of AT&T's petition granted herein.

APPROVED; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED That the Communication from Assistant City Solicitor Jeremy McManus, re: Special Permit from Cellco Partnership d/b/a Verizon Wireless to install a new stealth Wireless Communication Facility including an 80-foot stealth pole with accessory ground equipment at 739-769 Donald J. Lynch Boulevard, in proper legal form, Order No. 22-1008570B, **FILE**; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED

**DECISION ON A SPECIAL PERMIT
CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

**DECISION ON A SPECIAL PERMIT
ORDER NO. 22-1008570C**

Application of:

Cellco Partnership d/b/a Verizon Wireless
118 Flanders Road
Westborough, MA 01581
Order No. 22-1008570C

Locus:

739-769 Donald Lynch Boulevard, Marlborough, MA
Assessor's Map 50, Parcel 7B

The City Council of the City of Marlborough hereby **GRANTS** the Application for a Special Permit to Cellco Partnership d/b/a Verizon Wireless (the "Applicant") to allow for the construction of a new Wireless Communications Facility stealth monopole tower with accessory ground equipment including a diesel-fueled stand-by power generator pursuant to the submitted plans, as provided in the DECISION and subject to the Findings of Fact and Conditions therein.

FINDINGS OF FACT

1. The Applicant is a duly organized and existing corporation and FCC Licensee having a local business address of 118 Flanders Road, Westborough, MA 01581 with correspondences being sent via Applicant's Agent c/o Gehring & Associates, LLC, P. O. Box 98, West Mystic, CT 06388.
2. The Applicant is a lessee of a portion of the property located at 739-769 Donald Lynch Boulevard, Marlborough, MA (Assessor's Map 50, Parcel 7B), Marlborough, Massachusetts (the "Site").
3. On April 6, 2022, the Applicant filed with the City Clerk of the City of Marlborough an application (hereinafter referred to as the "Application") for a Special Permit under Chapter 650 (Zoning) of the Code of the City of Marlborough (hereinafter referred to as the "Zoning Ordinance"), Section 650-25 entitled Wireless Communications Facilities.
4. In accordance with Article V, Section 650-18(A)(20) and Section 650-25 of the Zoning Ordinance, the Applicant proposes the installation of a new Wireless Communications Facility stealth monopole tower with accessory ground equipment including a diesel-fueled stand-by power generator (the "Use") at the Site, as shown in the plans submitted with the Application and referenced in paragraph 5 below.
5. In connection with the Application, the Applicant submitted a certified list of abutters, filing fees, and plans entitled "Wireless Telecommunications Installation With New 80' RF-Transparent Monopole" by Chappell Engineering Associates, LLC, with the last revision date of March 18, 2022, including Title Sheet (T01), Property Plan (C01), Site Plan (C02), Equipment Area Plan (A01), Southeast Site Elevation and Southwest Site Elevation (A02), and Site Details (A03) (collectively the "Plans"), as **ATTACHMENT A**.

6. Pursuant to the Application, the Applicant is licensed by the FCC to provide personal wireless services in the City of Marlborough and surrounding areas and currently has a problem with significant gaps in coverage and capacity issues with coverage that could be alleviated by installing a new site on the subject location as shown on the submitted RF Report and plans.
7. The Site is located in the Limited Industrial (LI) Zoning District which allows a Special Permit to be issued for a Wireless Communication Facility ("WCF").
8. Pursuant to the Rules and Regulations of the City Council of the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application, and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters and the planning boards of all surrounding towns entitled thereto in accordance with applicable regulations and law.
9. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on May 9, 2022. The public hearing was held in the City Council Chamber, at the Marlborough City Hall, 140 Main Street. The public hearing was closed on May 9, 2022.
10. The Applicant presented testimony at the public hearing wherein all Twelve (12) Tabs of the contents of the submitted Application Binders were reviewed and the submitted materials and substantial evidence was recapped and reviewed as follows:

Tab 1 - City of Marlborough required application forms.

Tab 2 - Statement in Support of Application wherein all the Zoning Ordinance provisions pertaining to wireless facilities and special permits are analyzed line-by-line in addition to an Alternate Site Analysis justifying the choice of the subject property for the proposed installation of the Use.

Tab 3 - Landowner Authorization - demonstrating Applicant's leasehold interest in the property with permission to file the submitted application.

Tab 4 - Assessor's Field Card, Tax Map and Deed, for reference.

Tab 5 - Copies of Applicant's twelve (12) FCC Licenses authorizing broadcasts from Marlborough and the surrounding areas.

Tab 6 - Radio Frequency Engineer's RF Report describing why the site is needed, complete with coverage maps showing the significant capacity and coverage problems the subject site is designed to rectify.

Tab 7 - Confirmation of RF Emissions compliance pursuant to applicable FCC regulations wherein it is predicted the Use will give off less than six percent (6%) of the maximum allowed for such facilities on the ground adjacent to the facility.

Tab 8 - FAA clearance to build the proposed stealth pole as it will not be an obstruction or hazard to air navigation.

Tab 9 - An Acoustical Report demonstrating compliance with all applicable noise regulations.

Tab 10 - Statement from a licensed Real Estate Appraiser concluding that construction of the Use will have no deleterious impact on surrounding property values.

Tab 11 - Photosimulations created by performing a balloon float on March 23, 2022. An exhibit was passed out to the Councilors showing the proposed pole painted different colors so that the Council could choose.

Tab 12 - Site Plans and Elevation Drawings by Chappell Engineering, with last revision date March 18, 2022, showing the proposed facility which will occupy four (4) parking spaces adjacent to the existing building which currently hosts the EMS and DSW stores, next door to Best Buy.

11. At the Public Hearing, there were no members of the public speaking in opposition to the Use.
12. No written comments in favor or in opposition were received regarding the Use.
13. Only one member of the public had any questions or comments, which pertained to the stand-by generator's fuel source (diesel) and how the paint on the proposed pole would be adhered (Applicant said answer would be provided to committee).

BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS AND TAKES THE FOLLOWING ACTIONS:

- A. The Applicant has complied with the Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.
- B. The City Council finds the proposed Use of the Site is in harmony with the intent and general purpose of the Zoning Ordinance of the City of Marlborough when subject to appropriate terms and conditions as provided in this Decision. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.
- C. The City Council finds that the proposed Use is consistent with the purposes of Section 650-25 governing WCFs in the City. There are no other existing communications towers or tall buildings in the vicinity of the subject property that could accommodate the Applicant's antennas thereby justifying the need to construct this new proposed facility constituting the Use.
- D. The proposed WCF and location are consistent with both the applicable review standards in Section 650-25(D) and the development requirements in Section 650-25(E).
- E. The City Council recognizes the Applicant is a federal licensee afforded certain protection under federal telecommunications law, to the extent provided by law.
- F. The City Council confirms the Applicant has demonstrated the need to construct the proposed facility to solve certain wireless coverage and capacity issues that currently exist in its network in the vicinity as enumerated in the submitted RF report.
- G. The City Council finds that the proposed Use, which will enhance wireless telecommunications, is good for business and good for the public safety and convenience where much of the population now owns and relies on wireless connectivity and a majority of 911 calls are now made on wireless telephones.
- H. The City Council finds that there are adequate, ample, in-fact surplus, parking spaces on the host parcel so the Applicant's use of four (4) parking spaces for its development of the Use will have de minimis and negligible overall impact on the parking situation on site.

- I. The City Council finds the proposed Use, which consists of an unmanned and unoccupied facility, will have no impact on traffic and pedestrian safety in the area.
- J. The City Council finds the proposed Use will not be contrary to the public health, safety, convenience and welfare and will not be offensive or detrimental given its modest height which is in-fact lower than the average height of all the surrounding towers the Use will connect with.
- K. The City Council, pursuant to its authority under MGL Chapter 40A and the City of Marlborough Zoning Ordinance **GRANTS** to the Applicant a Special Permit for construction of the Use, a new stealth pole Personal Wireless Communications Facility as shown on the submitted Plans, **SUBJECT TO THE FOLLOWING CONDITIONS**, which conditions shall be binding on the Applicant, its successors and/or assigns:
 1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts and shall be built according to the Plans as may be amended during Site Plan Review.
 2. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review by the Site Plan Review Committee, in accordance with the City of Marlborough Site Plan Review Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit, and no occupancy permit shall be issued until the Applicant has complied with all conditions. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed and approved by the City Council as the Special Permit Granting Authority.
 3. Incorporation of Submissions. All plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
 4. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of the Use.
 5. All work performed on the Site shall comply with this Decision. No other building or construction or activity (including but not limited to any other communications device, WCF, tower, etc.) shall occur without further modification of this Special Permit. This condition shall be interpreted consistent with federal law governing WCF's.
 6. The proposed stealth monopole shall be painted the color Delorean Gray as discussed and approved by Committee and ratified by the full Council.

7. Routine testing of the stand-by generator shall only occur during weekdays between 10:00 AM and 2:00 PM.
8. No signage or advertising of any sort shall be permitted on the proposed stealth pole.
9. There shall be no climbing pegs which would allow unauthorized individuals to climb the proposed pole.
10. The Applicant shall work with the Fire Department or its designee to provide space for the attachment of a public safety antenna on the top of the proposed tower along with ground space inside the compound for its municipal radio equipment should the City pursue attaching an antenna to the proposed site to improve public safety communications. The Applicant shall provide this space rent-free, but the City shall be responsible for the costs of the antenna, equipment, installation, and maintenance of said antenna and equipment. The Applicant and City shall work cooperatively to execute an agreement covering the terms of this installation as provided herein.
11. The Applicant shall comply with all applicable conditions for WCFs on private property as set forth in Section 650-25(F), each of which shall constitute conditions of this special permit, except that the Applicant does not need to provide annual certifications of compliance with FAA and FCC rules and regulations pursuant to Sections 650-25(F)(1) and 650-25(F)(2) to the extent that those annual certifications do not exist.
12. In accordance with the provisions of Massachusetts General Laws Chapter 40A, Section 11, the Applicant, its successors and/or assigns, at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Commissioner for a building permit. Upon recording, the Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council Office, the Building Department and the City Solicitor's Office.

Yea: 11 – Nay: 0

Yea: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, Perlman, & Robey.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED That the Petition from Massachusetts Electric and Verizon New England, to install a new pole and remove the old pole and install underground cable for city work around the pump station on Cullinane Drive, **APPROVED WITH THE FOLLOWING CONDITIONS**; adopted.

1. National Grid and their contractor shall coordinate the work with the DPW/Engineering Pump Station Project Managers.
2. Any necessary easements are to be obtained from affected property owners.
3. A street opening permit must be applied for by the proposed contractor performing the work.
4. The contractor performing the work must obtain a street opening bond with the City of Marlborough.

5. The contractor shall provide the Engineering Division preconstruction photos of driveways, sidewalks, lawn areas, and roadway areas impacted by all construction activities.
6. A proper staging area is to be located/acquired before work commences – material and equipment is not to be parked/stockpiled within the city right of way and or private property unless permission is granted in writing by the property owner.
7. The contractor is to ensure residents are always able to enter and exit their driveways (have necessary steel plating on site and accessible).
8. Ensure construction safety controls are established (signage, drums, police details, etc...) and are in accordance with the latest MUTCD standards.
9. Trench backfilling, compacting, temporary, and final paving are to be done in accordance with the City of Marlborough standard trenching details.
10. Trenches are to be paved or completely backfilled and compacted at the end of each workday. Trenches are never to be left unattended.
11. Post construction loaming and seeding are to be done in accordance with the 1995 MHD Standard Specifications sections 751 & 765.
12. Proposed utility pole(s) shall not put any sidewalks or sidewalk ramps into non-compliance with current ADA standards.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED That the Communication from City Solicitor Jason Grossfield, re: Proposed Zoning Map Amendment for parcels of land located on Jefferson Street and a small portion of Lincoln Street, in proper legal form, Order No. 21/22-1008475E, **FILE**; adopted.

Councilor Dumais Recused.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED THAT, PURSUANT TO SECTION 5 OF CHAPTER 40A OF THE GENERAL LAWS, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT CHAPTER 650 OF THE CODE OF THE CITY OF MARLBOROUGH, AS MOST RECENTLY AMENDED, BE FURTHER AMENDED AS FOLLOWS:

I. The Zoning Map established by Chapter 650, Zoning, Article III Establishment of Districts, Section 650-8 "Boundaries Established; Zoning Map" is hereby amended as follows:

- a. The zoning map amendments set forth herein shall be as shown on the map attached herewith entitled "Proposed Zoning Change Commercial Automotive to NB & RB" (Revised: 5/27/22).
- b. The land shown on said attached map as "CA to NB" shall be included in the Neighborhood Business (NB) District. Said land includes the following:

City Assessor Map 56, Parcels 147, 148, 150, 151, 152, and land within the railtrail corridor including the former rail spur; and

- c. The land shown on said attached map as "CA to RB" shall be included in the Residence B (RB) District. Said land includes the following:

City Assessor Map 56, Parcels 153, 154, 155, 156, 157, and 158.

II. The effective date of these amendments shall be the date of passage.

Councilor Dumais Recused.

APPROVED; adopted.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED There being no further business, the regular meeting of the City Council is herewith adjourned at 8:36 PM; adopted.